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Federal Communications Commission
 WASHINGTON, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)
)
 Amendment of Section 73.202(b),) MM Docket No. 01-186
 Table of Allotments,) RM-9976
 FM Broadcast Stations.)
 (Honor, Bear Lake, Ludington,)
 and Walhalla, Michigan))

TO: Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau

COMMENTS OF WCCW RADIO, INC.

WCCW Radio, Inc. (WCCW), licensee of AM Broadcast Station WCCW and FM Broadcast Station WCCW-FM, Traverse City, Michigan, and permittee of FM Broadcast Station WCZW(FM), Charlevoix, Michigan, hereby respectfully submits its Comments in the above-captioned proceeding. In so doing, the following is shown:

Preliminary Statement

1. Traverse City, the city of license of WCCW and WCCW-FM, is approximately 22 miles northeast of Honor, Michigan, the community of license of WIAR(FM). At the outset, WCCW states that it would have no objection to WIAR(FM), Honor, upgrading to Class C3 status by itself, if no other allocations were involved. However, for the reasons stated herein, WCCW strongly opposes the plan to

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reallocate Channel 291A in place of Channel 261A at Bear Lake, Michigan. This aspect of the above-captioned proceeding is part of a scheme devised by Fort Bend Broadcasting Company (Fort Bend) to reallocate Channel 261 to the market formed by the county seat cities of Charlevoix and Petoskey, roughly 90 miles northeast of Bear Lake, and then upgrade that channel to Class C1 status. The Charlevoix-Petoskey market is part of the Northwest Michigan radio market which is rated by the Arbitron organization.

The Reallocation of Channel 261 Is Suspect

2. The instant case is the second proceeding at the Commission to involve the reallocation of Channel 261 from Bear Lake. The exact proposal is for Channel 261 to be reallocated to the community of Bellaire, Michigan (in Antrim County). However, the reference coordinates stated in MM Docket No. 00-69 for the reallocated Channel 261 are N. Lat. 45° 20' 48", W. Long. 85° 07' 46". As it turns out, these coordinates have nothing to do with the vicinity of Bellaire, but rather are virtually half-way between Charlevoix (the county seat of Charlevoix County) and Petoskey (the county seat of Emmet County); with respect to Charlevoix, at National Atlas reference coordinates N. Lat. 45° 19' 04", W. Long. 85° 15' 29", the distance is 10.581 kilometers (or 6.575 miles); and with respect to Petoskey, at National Atlas reference coordinates N. Lat. 45° 22' 23",

W. Long. 84° 57' 18", the distance is 13.98 kilometers (or 8.687 miles).

3. Section 73.207(b) of the Commission's Rules, the FM Table of Allotments, reflects that Charlevoix already has two FM allocations, Channels 290C1 and 300A (the latter is WCZW's allocation), and that Petoskey likewise has two FM allocations, Channels 242C1 and 255C1.

4. The consistent policy of the Commission for at least the past two decades is to look with disfavor on the type of scheme put forth by the proponents of this docket. **FM Table of Assignments, St. Augustine and Callahan, Florida**, 46 RR 2d 1295 (Bureau, 1980) is instructive. Therein, a petitioner sought to reallocate an FM channel from a county seat with a population of 12,352 to a small town with a population of 883, thereby (1)leaving the county seat without an FM allocation and (2)reallocating the channel to a place which would provide service to Jacksonville, Florida, a city with many broadcast stations. On those facts, the Commission declined to reallocate the channel from St. Augustine to Callahan; its rationale was as follows:

Furthermore, we regard the deletion of an assigned channel for which an interest has been expressed as requiring a heavier burden on the party requesting its deletion to demonstrate its greater need elsewhere. In fact we have found no case in which an applied for channel has been deleted in

favor of a community this small and which is so close to a much larger city.¹

5. In 1990, the Commission issued a policy statement which generally prohibits the removal of the sole existing service from a community. See **Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License**, 5 FCC 7094 (1990). Compared to the foregoing, Fort Bend's proposal is contrary to the public interest.

6. The Commission has stated that, the removal of an existing station representing a community's sole local broadcast service "presumptively disservices the public interest." See for example **FM Table of Allotments, Alva, Oklahoma et al**, 16 FCC Rcd 1525 (Bureau, 2000), recons. den. 16 FCC Rcd 7979 (Bureau, 2001); **FM Table of Allotments, Sibley, Iowa and Brandon, South Dakota**, 15 FCC Rcd 19130 (Bureau, 2000).

7. While the Commission has stated that it will entertain requests for waiver of this prohibition, it has also indicated that circumstances where the public interest is better served by the removal of a sole existing local service are rare. **1990 Policy Statement**, *supra*, 5 FCC 7094 at ¶17. Furthermore, the Commission has explicitly stated

that it "do[es] not believe that the public interest is served by removing a community's sole local transmission service merely to provide a first local transmission to another community." **FM Table of Allotments, Llano and Marble Falls, Texas**, 10 FCC Rcd 4913 at ¶4 (Bureau, 1997), *recon. dismissed*, 12 FCC Rcd 6809 (Bureau, 1997).

8. Not only is Fort Bend trying to snatch channel 261 from Bear Lake to remove it to a distant community, it has actually obscured from the Commission the real communities that Fort Bend seeks to serve with Channel 261, which are, indubitably, Charlevoix and Petoskey, not Bellaire. Fort Bend's gambit is contrary to the Commission's well-established allotment priorities and policies.

9. Lake Michigan Broadcasting, Inc., licensee of FM Broadcast Station WKLA-FM, Ludington, Michigan, opposed Fort Bend's gambit in MM Docket No. 00-69 in part on the foregoing grounds. WCCW now joins WKLA-FM in opposing the *de facto* reallocation of Channel 261 from Bear Lake to the Charlevoix-Petoskey market.

This Docket Should Be Consolidated with Docket 00-69

10. Because both Docket 00-69 and Docket 01-186 propose the deletion of Channel 261A at Bear Lake, Michigan and the substitution of Channel 291A there, the instant

¹Citing **Arcadia, Englewood and Lake Placid, Florida**, 41 Fed. Reg. 3880 (Bureau, 1976); and **Burlington and Newport**,

proceeding should be consolidated with Docket 00-69, so that inconsistent actions do not emerge from the respective dockets.

Conclusion

11. Should station WIAR be unable to otherwise upgrade its facility to Class C3 status, the whole proposal set forth by Northern Radio, Inc. and Fort Bend Broadcasting Company in Docket No. 01-186 should be rejected, and the proceeding terminated forthwith.

WHEREFORE, WCCW Radio, Inc. opposes the reallocation of Channel 261 from Bear Lake, Michigan, and, as a result, all proposals contained in Docket No. 01-186 **MUST BE DISMISSED, DENIED OR OTHERWISE REJECTED**, and that this proceeding be terminated without any amendment to the FM Table of Allotments.

Respectfully submitted,

WCCW RADIO, INC.

By 

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CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing "Comments of WCCW Radio, Inc." were served by first-class United States mail, postage prepaid, on this 1st day of October, 2001 upon the following:

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